

REPORT BY THE
OFFICE OF THE AUDITOR GENERAL

P-751

THE NATIVE AMERICAN HERITAGE COMMISSION
NEEDS TO IMPROVE THE MANAGEMENT OF ITS
STATUTORY RESPONSIBILITIES AND RELATED ACTIVITIES

APRIL 1988



Telephone:
(916) 445-0255

STATE OF CALIFORNIA
Office of the Auditor General

660 J STREET, SUITE 300
SACRAMENTO, CA 95814

Thomas W. Hayes
Auditor General

April 7, 1988

P-751

Honorable Bruce Bronzan, Chairman
Members, Joint Legislative
Audit Committee
State Capitol, Room 448
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the Native American Heritage Commission. From July 1, 1982, through January 15, 1988, the Native American Heritage Commission has taken actions to meet 10 of its 13 statutory responsibilities. However, it still needs to improve the management of its activities to fulfill other statutory responsibilities and related activities.

Respectfully submitted,

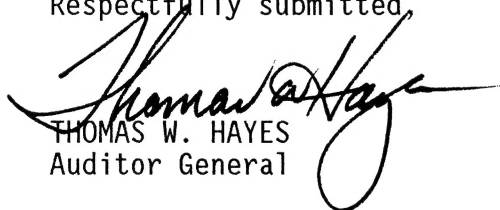

THOMAS W. HAYES
Auditor General

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	S-1
INTRODUCTION	1
AUDIT RESULTS	
THE NATIVE AMERICAN HERITAGE COMMISSION NEEDS TO IMPROVE THE MANAGEMENT OF ITS STATUTORY RESPONSIBILITIES AND RELATED ACTIVITIES	5
CONCLUSION	21
RECOMMENDATIONS	23
APPENDICES	
A FISCAL MANAGEMENT OF THE COMMISSION	27
B PROCEDURES FOR APPOINTING COMMISSIONERS AND THE EXECUTIVE SECRETARY AND FOR HIRING COMMISSION STAFF	29
RESPONSE TO THE OFFICE OF THE AUDITOR GENERAL'S REPORT	
RESOURCES AGENCY The Native American Heritage Commission	31

SUMMARY

RESULTS IN BRIEF

The Native American Heritage Commission (commission) has initiated actions to complete 10 of its 13 statutory responsibilities; however, it still needs to improve the management of its activities to fulfill other statutory responsibilities and related activities. Specifically, for the period from July 1, 1982, through January 15, 1988, we noted the following conditions:

- The commission's inventory of places that have special religious or social significance to Native Americans is incomplete and difficult to use. There is a current backlog of approximately 4,000 sites that have not been added to the inventory;
- Although the law requires that the commission "accept" grants and donations to protect the cultural interests of Native Americans, the commission has not sought or obtained grants even though they can be sought from other state and federal agencies;
- The commission has not conducted follow-ups on requests from county coroners, developers, and the public for assistance in treating and disposing of the skeletal remains of Native Americans. These follow-ups are necessary to help ensure that the remains are treated and disposed of properly; and
- The commission has not informed county coroners of their responsibility to notify the commission when coroners determine that human remains discovered are those of Native Americans.

Finally, Appendices A and B present information on the fiscal activities of the commission and the procedures used to appoint commissioners and the executive secretary and to hire commission staff.

BACKGROUND

The commission was created by Chapter 1332, Statutes of 1976, to preserve and enhance the heritage of Native Americans and to protect their historic and cultural resources within the State. The commission is composed of nine members appointed by the governor with the advice and consent of the Senate. The governor also appoints an executive secretary who administers the operations of the commission. The commission's powers and duties include identifying and cataloguing places of special religious or social significance to Native Americans, taking legal action, when necessary, to prevent severe and irreparable damage to sacred places and ensure access for Native Americans to sacred places on public property, and mediating disputes between landowners and Native Americans regarding the treatment and disposition of skeletal remains of Native Americans. In addition, Chapter 1492, Statutes of 1982, gave the commission responsibility for assisting Native Americans in protecting the skeletal remains of their ancestors.

PRINCIPAL FINDINGS

The Commission Needs To Consolidate and Update Its Inventories of Sacred Sites

Even though the commission has taken actions to identify and catalog sites that are considered sacred to Native Americans, it still has not consolidated this information, which is in three inventories, into one inventory. The information is in three separate inventories because, during the period of our review, three different people worked on cataloguing the

information about sites, and each person used a different format. Because the information on sites is spread among the three different inventories, the commission cannot obtain information about a site quickly. Further, the commission has not added approximately 4,000 sites to the inventory. During the period between March 1985 and February 1986, the commission had limited staff available to work on the inventory. In addition, the commission is waiting for the approval of funds to purchase a computer to consolidate the existing data of the three separate inventories. A complete inventory of sacred sites is needed to assist Native Americans in preserving and protecting these sites from the encroachment of future land development.

The Commission Needs To Seek Grants and Donations

The commission has not sought or obtained grants and donations to fund some of its cultural projects involving Native Americans. We found that grant monies can be sought from other state and federal agencies. For example, the National Endowment for the Arts, in Washington, D.C., provides grants in fiscal year 1987-88 from \$2,500 to \$30,000 for folk arts programs. If the commission sought grants, it might be able to complete several projects. For example, according to the executive secretary, the commission does not have enough funds to develop educational programs concerning the cultural history of California Native Americans whose cultural continuity has been disrupted.

The Commission Needs To Conduct Follow-ups

Although the commission generally notifies the appropriate Native American descendants of human remains when county coroners determine that the remains are those of Native Americans, it does not conduct follow-ups. According to the executive secretary, it is important to conduct these follow-ups to help ensure that the human remains are treated and disposed of

properly. For example, in May 1986, the Los Angeles County coroner requested the commission's assistance to dispose of Native American remains that had been discovered during the construction of an apartment complex. However, although the commission notified the descendant in May 1986, it did not follow up to ensure that the remains were disposed of correctly.

The Commission Needs To Inform County Coroners of Reporting Requirements

County coroners are required to notify the commission if the coroners determine that human remains discovered are those of Native Americans. However, 7 of the 16 county coroners that we contacted who did not request the commission's assistance indicated that they were not familiar with the law requiring them to do so.

Reasons the Commission Has Not Fulfilled All of Its Statutory Responsibilities and Related Activities

The commission has not fulfilled all of its statutory responsibilities and related activities because it has not established a plan that sets forth its goals and priorities indicating the activities on which staff should be working and the dates by which certain tasks should be accomplished. The commission also has not established the criteria to measure how efficiently it is performing its statutory responsibilities and related activities. Finally, since July 1, 1984, the commission has had a high turnover of commission staff, and the position of executive secretary has remained vacant for two periods ranging from 6 to 11 months, consecutively.

CORRECTIVE ACTION

During our review, the commission developed procedures for its staff to use in processing requests for assistance from county coroners, developers, and the public for handling the remains of Native Americans. The commission also received a catalog identifying grants that are available for state agencies in California. Finally, the executive secretary developed goals for administering the day-to-day operations of the commission for fiscal year 1988-89.

RECOMMENDATIONS

To improve the management of its statutory responsibilities and related activities, the Native American Heritage Commission should establish a plan that sets forth its goals and priorities for accomplishing its statutory responsibilities and related activities and identify the criteria with which to measure its effectiveness in accomplishing these goals. In addition, the commission should take the following actions:

- Consolidate the information gathered from the three inventories of sacred sites and add to the inventory the backlog of identified sites that have not been added already;
- Review catalogs to determine whether federal and state grants are available for use by the commission and apply for appropriate funding to protect the cultural interests of Native Americans;
- Conduct follow-ups to help ensure that the skeletal remains of Native Americans are treated and disposed of properly and inform county coroners of their responsibility to notify the commission when they determine that the remains discovered are those of Native Americans; and
- As soon as authorized positions are vacated, take steps to fill these positions.

AGENCY COMMENTS

The Native American Heritage Commission concurs with the Office of the Auditor General's recommendations and is taking action to implement these recommendations.

INTRODUCTION

The Native American Heritage Commission (commission) was created by Chapter 1332, Statutes of 1976. The commission is the single governmental unit legislatively authorized to protect the heritage of Native Americans and their historic and cultural resources within the State. The commission is composed of nine members appointed by the governor with the advice and consent of the Senate. The commission's staff is composed of an executive secretary and four other staff members. The governor appoints the executive secretary, and according to the commission's bylaws, the executive secretary administers the operations of the commission. For fiscal year 1987-88, the commission's budget is \$283,000.

Sections 5097.94 through 5097.98 of the Public Resources Code specify the powers and duties of the commission that enable it to preserve and protect the cultural interests of Native Americans. These powers and duties include identifying and cataloguing places of special religious or social significance to Native Americans, taking legal action, when necessary, to prevent severe and irreparable damage to sacred places and ensure access for Native Americans to sacred places on public property, and mediating disputes between landowners and Native Americans regarding the treatment and disposition of skeletal remains of Native Americans. Additional duties include making recommendations to the Legislature, the director of Parks and

Recreation, and the California Arts Council regarding the protection and preservation of cultural and historic resources and establishing cooperative efforts with various state and federal agencies and departments. In addition, Chapter 1492, Statutes of 1982, gave the commission responsibility for assisting Native Americans in protecting the skeletal remains of their ancestors.

To carry out its responsibilities, the commission holds at least three public meetings a year to address current litigation, current activities, and the concerns of Native Americans. Also, according to the executive secretary, the commission holds four additional meetings a year in Sacramento. The commission also responds to a variety of requests for assistance from county coroners, developers, and the public when they discover skeletal remains of Native Americans. The types of assistance that the commission provided during fiscal year 1986-87 included helping to preserve burial sites from possible destruction by developers and helping to obtain access for Native Americans to fishing, hunting, sacred, and religious sites. The commission's overall objective is to remain responsive to the Native American community.

SCOPE AND METHODOLOGY

The purpose of our audit was to review and evaluate the activities of the commission from July 1, 1982, through January 15, 1988, in fulfilling its statutory responsibilities. The

audit also includes an analysis of the fiscal management of the commission and information regarding the procedures used to appoint commissioners and the executive secretary and to hire commission staff.

To determine the activities of the commission in fulfilling its statutory responsibilities, we reviewed the commission's correspondence files and minutes of commission meetings conducted from July 1, 1982, through January 15, 1988. However, the commission has lost the minutes for 5 of the 29 commission meetings conducted during this time. We also reviewed two commission reports submitted to the Legislature and interviewed six commissioners who comprised the commission as of December 1, 1987, and four of the five commission staff to obtain information on the commission's activities. In addition, to obtain further information on the commission's activities, we contacted other state and federal agencies, such as the California Arts Council, the federal Bureau of Land Management, and the federal Bureau of Indian Affairs. Further, we attended commission meetings to determine how the commission operates. We also visited an Indian reservation in southern California. Finally, to determine whether the commission followed up on requests to ensure that Native American skeletal remains were treated and disposed of properly, we tested the 127 notifications received from county coroners, developers, and the public requesting the commission's assistance.

To determine the fiscal activities of the commission, we reviewed the Department of Finance's audit report of the commission conducted in December 1986. To ensure that the commission implemented corrective action and properly processed its invoices, we examined the 180 invoices that the commission submitted to the Department of General Services for payment from January 1, 1987, through December 31, 1987. (Appendix A describes the fiscal management of the commission.)

To determine the procedure used to appoint commissioners and the executive secretary, we requested the Governor's Office to provide us with its appointment procedure. We also reviewed the procedures that the commission uses to hire its staff. (Appendix B presents the procedures used to appoint the commissioners and the executive secretary and to hire commission staff.)

Finally, the Legislature also requested us to review the working relationship between the commissioners and commission staff; however, we could not evaluate this relationship because of the lack of evidence documenting this issue.

AUDIT RESULTS

THE NATIVE AMERICAN HERITAGE COMMISSION NEEDS TO IMPROVE THE MANAGEMENT OF ITS STATUTORY RESPONSIBILITIES AND RELATED ACTIVITIES

Between July 1, 1982, and January 15, 1988, the Native American Heritage Commission (commission) has taken actions to meet 10 of its 13 statutory responsibilities. However, the commission needs to improve the management of its activities. Specifically, even though the commission has taken actions to identify and catalog sites that are considered sacred to Native Americans, it still has not consolidated this information, which is in three inventories, into one inventory. Further, the commission cannot update the inventory promptly. In addition, the commission has not sought grants and donations to carry out its intent to protect the cultural interests of Native Americans. Further, the commission has not conducted follow-ups on requests from county coroners, developers, and the public for assistance in treating and disposing of the skeletal remains of Native Americans. These follow-ups are necessary to help ensure that the remains of Native Americans are treated and disposed of properly. Finally, the commission has not informed all county coroners of their responsibility to notify the commission when coroners determine or believe that human remains discovered are those of Native Americans. The commission has not fulfilled all of its statutory responsibilities and related activities because it has not established a plan that sets forth its

goals and priorities indicating the activities on which staff should be working and the dates by which certain tasks should be accomplished. The commission also has not established the criteria to measure how efficiently it is performing its statutory responsibilities and related activities. Finally, since July 1, 1984, the commission has had a high turnover of commission staff, and the position of executive secretary has remained vacant for two periods ranging from 6 to 11 months, consecutively.

The Extent to Which the Commission Has Met Its Statutory Responsibilities

The commission has taken various actions to meet its statutory responsibilities. For example, Section 5097.94(k) of the Public Resources Code authorizes the commission to mediate disputes arising between landowners and known descendants of Native Americans regarding the treatment and disposition of skeletal remains of Native Americans. Between July 1, 1982, and January 15, 1988, the commission mediated 17 disputes between landowners and Native American descendants regarding how such remains should be treated and disposed of. During one mediation, on June 19, 1985, the commission assisted a local Indian community in Shasta County in a dispute with a developer who wanted to construct a hydro-electric project in the area of Native American burial sites.

In addition, Sections 5097.94(g) and 5097.97 of the Public Resources Code authorize the commission to seek the assistance of the attorney general in taking legal action, when necessary, to prevent severe and irreparable damage to sacred places and ensure access for Native Americans to sanctified cemeteries, places of worship, and other religious or ceremonial sites on public property. Between July 1, 1982, and January 15, 1988, the commission initiated four such legal actions with the attorney general. For example, in 1982, the attorney general filed a legal action against the chief of the United States Forest Service and the secretary of the United States Department of Agriculture to prevent the Forest Service from constructing a six-mile road through an area sacred to Native Americans. According to the commission, as of January 15, 1988, this case is still in the United States Supreme Court pending a decision.

Even though the commission has initiated actions to accomplish 10 of its statutory responsibilities, it still has taken no action on 3 responsibilities. For example, during the period of our review, the commission has not made recommendations to the Legislature to acquire for the State private lands on which sacred sites are situated, has not made recommendations to the Legislature regarding procedures that will encourage private property owners voluntarily to preserve and protect sacred sites, and has not sought grants and donations to use in fulfilling its statutory responsibility to protect the cultural

interests of Native Americans. Table 1 shows the extent to which the commission has met its statutory responsibilities from July 1, 1982, through January 15, 1988.

TABLE 1

**THE EXTENT TO WHICH THE COMMISSION HAS MET
ITS STATUTORY RESPONSIBILITIES
FROM JULY 1, 1982 THROUGH JANUARY 15, 1988**

<u>Public Resources Code Section</u>	<u>Requirement</u>	<u>Action</u>
5097.94(a)	To identify and catalog places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans on private lands. (To be completed by January 1, 1984.)	Inventory is not complete
5097.94(b)	To make recommendations regarding Native American sacred places that are located on private lands, that are inaccessible, and that have cultural significance for Native Americans and merit acquisition by the State or public agencies to ensure access to Native Americans.	None
5097.94(c)	To make recommendations to the Legislature regarding procedures that will encourage private property owners voluntarily to preserve and protect sacred sites in a natural state and allow appropriate access to Native Americans for religious, ceremonial, or spiritual activities.	None
5097.94(d)	To appoint necessary clerical staff.	Frequent vacancies
5097.94(e)	To "accept" grants or donations to fulfill its statutory responsibility to protect the cultural interests of Native Americans.	None

Public Resources Code Section	Requirement	Action
5097.94(f)	To make recommendations to the director of Parks and Recreation and to the California Arts Council about the California State Indian Museum and other Indian matters.	9 recommendations to the Department of Parks and Recreation and no recommendations to the California Arts Council.
5097.94(g) and 5097.97	To bring action with the attorney general to ensure appropriate access for Native Americans to sanctified cemeteries, places of worship, religious or ceremonial sites, or sacred shrines located on public property and prevent severe and irreparable damage to these places.	4 legal actions
5097.94(h)	To request and utilize "the advice and service of all federal, state, local, and regional agencies."	10 requests for assistance
5097.94(i)	To assist Native Americans in obtaining appropriate access to sacred places located on public lands for ceremonial or spiritual activities.	13 requests for assistance
5097.94(j)	To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.	6 requests for assistance
5097.94(k)	To mediate disputes arising between landowners and known descendants regarding the treatment and disposition of Native American skeletal remains and items associated with Native American burials.	17 mediations

<u>Public Resources Code Section</u>	<u>Requirement</u>	<u>Action</u>
5097.94(1)	To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing of human remains and any item associated with Native American burials.	11 requests for assistance
5097.98(a)	To notify immediately those persons it believes to be the most likely descendants of human remains when county coroners determine that the remains are those of Native Americans.	35 of 40 notifications

Areas in Which the Commission Needs To Improve Its Management

Although the commission has initiated actions to fulfill its statutory responsibilities and related activities, it still needs to improve the management of its activities to fulfill other statutory responsibilities. Specifically, the commission needs to complete its inventory of sacred lands, seek and obtain grants and donations, and conduct follow-ups with county coroners to ensure that the skeletal remains of Native Americans are properly treated.

The Commission Needs To Consolidate and Update Its Inventories of Sacred Lands

Section 5097.94(a) of the Public Resources Code requires the commission to identify and catalog places of special religious or social significance to Native Americans and known graves and cemeteries of Native Americans that are located on private lands. A current inventory of sacred lands is needed to assist Native Americans in preserving and protecting these sites from the encroachment of future land developments. According to the executive secretary, developers report the location of their construction sites to local planning departments. The planning departments compile this information and prepare Environmental Impact Reports (EIRs) for the State Office of Planning and Research, which, subsequently, distributes the EIRs to appropriate state offices. The executive secretary stated that the commission receives and reviews EIRs and checks the locations of

proposed projects listed in the EIRs against the locations of sacred sites in the inventory to determine whether the proposed projects will affect a sacred site.

As of January 15, 1988, the commission still does not have a current inventory of sacred lands. The commission submitted a required report, dated December 30, 1987, to the Legislature stating that the inventory of sacred lands did not list all of the sacred sites but only 5,273 of them. The commission reported that it knows of an estimated 750 burial sites in San Diego and San Bernardino counties, for example, that are not incorporated into the inventory. Furthermore, between May 1986 and November 1987, Native Americans and anthropologists notified the commission of an additional 3,257 sacred sites that also have not been added to the inventory. When sacred sites are not incorporated into the inventory, the commission cannot quickly act to protect sites from new land developments.

In addition, the data for the inventory is maintained in three different formats. During the period from July 1, 1982, through June 30, 1983, the commission assigned two staff persons to work on a manual inventory of sacred lands. In December 1984, the commission contracted with a consultant to continue the work on the inventory. However, each person who worked on the inventory compiled the data for the inventory differently, with little direction from the commission. For example, one of the staff members catalogued the sites by including data such as site name, tribal affiliation, and type of site. The

commission's consultant catalogued the sites for the inventory by including data such as township, type of site, and map quadrants indicating the location of the site. Because the data for the inventory is maintained in three different formats, the commission cannot promptly update the inventory. According to the executive secretary, commission staff take approximately two hours each day to review EIRs. This review includes checking the location of the projects listed in the EIRs against the commission's manual inventory to ensure that the location will not affect a sacred site. According to the executive secretary, staff currently review approximately 4,000 EIRs annually because of increases in the construction of commercial sites, residential sites, and hydro-electric power plants.

In September 1987, the commission submitted a Budget Change Proposal requesting additional funds of approximately \$8,000 for fiscal year 1988-89 to purchase two computers and additional equipment to maintain and consolidate information already gathered into the inventory of sacred lands. However, as of March 2, 1988, the commission had not received approval for its request.

The Commission Needs To Seek Grants and Donations

Section 5097.94(e) of the Public Resources Code requires the commission to "accept" grants or donations to use in fulfilling its statutory responsibility to protect the cultural interests of Native Americans. From July 1, 1982, through January 15, 1988, the commission

has not sought grants to fund some of its projects involving Native Americans. However, grant monies are available through other state and federal agencies and are awarded to organizations through competitive bidding. For example, according to the director, the California Arts Council has a budget of \$40,000 for fiscal year 1988-89 for interagency grants available for Native American cultural programs and other state programs. In fiscal year 1987-88, the council provided funds ranging from \$8,000 to \$15,000 to state agencies for cultural activities. In addition, the National Endowment for the Arts, in Washington, D.C., provides grants from \$2,500 to \$30,000 for folk arts programs. Furthermore, the California Council for the Humanities provides grants averaging \$7,000 for public programs, such as exhibits, conferences, films, and lectures addressing, among other topics, the Native American culture.

If the commission sought and obtained some of these grants, it might be able to complete several proposed projects. For example, the executive secretary stated that the commission does not have enough funds to develop educational programs concerning the cultural history of California Native Americans whose cultural continuity has been disrupted. According to the executive secretary, other projects for which the commission could use grants include the purchase of containers to reinter skeletal remains, the reconstruction of Native American sweat houses or round houses, and the training of individuals who are responsible for identifying the human remains of Native Americans. All of these projects will assist the commission in protecting the cultural interests of Native Americans.

The Commission Needs
To Conduct Follow-ups

Although the commission generally notifies the appropriate Native American descendants of human remains when county coroners determine that the remains are those of Native Americans, it does not follow up to ensure that the human remains are treated and disposed of properly. Section 5097.98(a) of the Public Resources Code requires the commission to notify the most likely descendant of Native Americans when county coroners determine that human remains are those of Native Americans. Further, according to the executive secretary, the commission's current procedures require staff to complete a request form when county coroners, developers, and the public request the commission's assistance for treating and disposing of these remains. The request form includes the name and county of the person requesting assistance, the nature of the request, the action the commission took to resolve the request, and whether a follow-up is necessary. The executive secretary also stated that it is important to conduct follow-ups to these requests to help ensure that Native American skeletal remains are treated properly.

From July 1, 1982, through January 15, 1988, the commission received 128 requests from county coroners, developers, and the public requesting the commission's assistance to dispose of Native American skeletal remains. In 92 instances, the commission should have conducted a follow-up to ensure that remains were treated and disposed of properly, but the commission did not do so. For example, in

May 1986, the Los Angeles County coroner requested the commission's assistance to dispose of Native American remains that had been discovered during the construction of an apartment complex. However, although the commission notified the descendant in May 1986, it did not follow up to ensure that the remains were disposed of correctly.

The Commission Needs To Inform County
Coroners of Reporting Requirements

In addition, Section 7050.5 (c) of the Health and Safety Code requires county coroners to notify the commission if the coroners determine or believe that human remains discovered are those of Native Americans. From July 1, 1982, through January 15, 1988, county coroners from 21 counties requested the commission's assistance in disposing of human remains of Native Americans. However, 7 of 16 county coroners that we sampled who did not request assistance to treat and dispose of Native American skeletal remains were not familiar with the law requiring them to do so. For example, according to the Merced County coroner, in November 1986, the coroner transported the skeletal remains of Native Americans to a local college for confirmation that the remains were of Native Americans, but the coroner did not notify the commission of this fact because he stated that he was not familiar with the law requiring him to do so. The coroner left the remains at the college.

Reasons the Commission Has Not Fulfilled
All of Its Statutory Responsibilities

To effectively and efficiently manage a program, an agency needs to establish a plan that sets forth goals and priorities for fulfilling its responsibilities. However, the commission has not established such a plan or established the criteria to measure how efficiently it is performing its statutory responsibilities. Because the commission lacks these management controls and has had a high turnover of staff, it has not fulfilled all of its statutory responsibilities and related activities.

A plan that establishes the commission's goals is necessary to help the commission determine the tasks that it intends to accomplish, the actions that it must take to accomplish the tasks, and the progress that is being made in accomplishing the tasks. Other state agencies plan their program activities by setting goals. For example, the State Building Standards Commission; the State Energy Resources, Conservatory and Development Commission; and the California Commission on Aging have all established goals. One of the objectives that the State Building Standards Commission has established for fiscal year 1987-88 is to revise the guidelines used to encourage public participation in the adoption of regulations for building standards. The State Building Standards Commission also set a date of January 1988 in which to accomplish this objective. The commission recognizes that it should establish goals. In a report dated December 30, 1987, and mandated by the Legislature, the commission stated that it should establish

long-term goals and objectives to provide direction for the program and inform the Native American community of the commission's future goals and objectives. In addition, the executive secretary stated that the commission does not have a plan that establishes priorities to indicate the dates by which certain activities should be accomplished.

Further, according to the executive secretary, the commission has not established the criteria to measure how efficiently it is performing its statutory responsibilities. For example, the commission has not established the criteria for reviewing EIRs. According to the commission, staff members review approximately 4,000 EIRs each year. It is important that the staff members review these EIRs promptly to prevent land development on sacred sites. However, the commission has not established the criteria for the length of time staff members should take to review the EIRs. Furthermore, to monitor its own performance, the commission needs to prepare a report that identifies what it has achieved during a specific time. An annual report summarizing the commission's accomplishments could keep both the Legislature and the Native American community informed of the commission's progress in meeting its statutory responsibilities.

Finally, since July 1, 1984, the commission has had a high turnover of staff. From September 1, 1984, to January 15, 1988, the commission has had staff vacancies ranging from one month to 11 months. In addition, the position of executive secretary has remained vacant for two periods ranging from 6 to 11 months, consecutively. When the

positions of executive secretary and other staff were vacant, it was difficult for the commission to fulfill all of its statutory responsibilities. For example, when staff positions were vacant between March 1985 and February 1986, the commission had limited staff to work on the inventory of sacred lands. Table 2 shows the number of months commission staff positions, including that of the executive secretary, were vacant from July 1, 1982, through January 15, 1988.

TABLE 2
THE NUMBER OF MONTHS COMMISSION STAFF
POSITIONS WERE VACANT
JULY 1, 1984 THROUGH JANUARY 15, 1988*

	<u>Fiscal Year</u>			<u>July 1, 1987,</u> <u>Through</u> <u>Jan. 15, 1988</u>
	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>	
Executive secretary**	4	7	5	1
Principal assistant			1	1
Program assistant	1		2	7
Staff services analyst		11		
Office technician	7			

* From July 1, 1982, through June 30, 1984, only a secretary's position was vacant.

** The executive secretary position was vacant for two periods: between July 1, 1984, and June 30, 1986, the position was vacant for 11 months, and between July 1, 1986, and January 15, 1988, the position was vacant for 6 months.

Corrective Action

During our review, the commission initiated actions to correct some of the problems that we identified. In November 1987, the commission developed procedures for its staff to use in following up requests for assistance from county coroners, developers, and the public for handling the skeletal remains of Native Americans. In addition, in December 1987, the commission received a catalog identifying grants that are available for state agencies in California. Further, in December 1987, the executive secretary developed goals for administering the day-to-day operations of the commission for fiscal year 1988-89. Moreover, the executive secretary has established a goal to enter the data of sacred sites into the proposed computer system. The executive secretary intends to complete this goal within a year. The executive secretary has established another goal to research grant programs to identify appropriate funding sources and also to submit applications for grants to improve cemeteries and cultural and religious sites. However, the commission has not yet approved these goals.

CONCLUSION

From July 1, 1982, through January 15, 1988, the Native American Heritage Commission has taken actions to meet 10 of its 13 statutory responsibilities. However, it still needs to improve the management of its activities to fulfill other

statutory responsibilities and related activities. During our review, we noted the following deficiencies:

- The commission has not consolidated information from three inventories into one inventory. The inventories are of places that have special religious or social significance to Native Americans. Further, the commission has a backlog of approximately 4,000 sites that have not been added to the inventory;
- The commission has not sought or obtained funding from federal and state grants;
- The commission has not conducted follow-ups on requests from county coroners, developers, and the public for assistance in treating and disposing of the skeletal remains of Native Americans. These follow-ups are necessary to help ensure that the skeletal remains of Native Americans are treated and disposed of properly; and
- The commission has not informed county coroners of their responsibility to notify the commission when skeletal remains discovered are those of Native Americans.

The commission has not fulfilled all of its statutory responsibilities and related activities because it has not established a plan that sets forth its goals and priorities indicating the activities on which staff should be working or the dates by which certain tasks should be accomplished. The commission also has not established the criteria to measure how efficiently it is performing its statutory responsibilities. Finally, the commission has had a high turnover of commission staff, and the position of executive secretary has remained vacant for two periods ranging from 6 to 11 months.

RECOMMENDATIONS

To improve the management of its statutory responsibilities and related activities, the Native American Heritage Commission should take the following actions:

- For each fiscal year, establish goals and priorities for accomplishing each of its statutory responsibilities and identify the criteria with which to measure its efficiency in accomplishing these goals;
- Prepare annual reports for the Legislature and the commission summarizing its accomplishments in meeting its statutory responsibilities;

- Consolidate the information gathered from the three inventories of sacred sites, add to the inventory the backlog of identified sites that have not been added already, and continue efforts to obtain additional funds to computerize the inventory;
- Review catalogs of federal and state grants and apply for the appropriate grants to complete projects that will help to protect the cultural interests of Native Americans;
- Conduct the necessary follow-ups with county coroners to ensure that the skeletal remains of Native Americans are treated and disposed of properly;
- Inform all county coroners of their responsibility to notify the commission when they determine that skeletal remains discovered are those of Native Americans; and
- As soon as authorized positions are vacated, take steps to fill these positions.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,


THOMAS W. HAYES
Auditor General

Date: April 4, 1988

Staff: Robert E. Christophel, Audit Manager
Cora L. Dixon

FISCAL MANAGEMENT OF THE COMMISSION

The Department of General Services handles the fiscal activities of the Native American Heritage Commission (commission), and the commission is responsible for establishing and maintaining a system of internal accounting controls and fiscal procedures as outlined in Section 13402 of the California Government Code. For example, according to the executive secretary, in processing invoices, the office technician determines whether commissioners and commission staff prepared invoices properly. Once the executive secretary approves the invoices, they are submitted to the Department of General Services for payment.

In December 1986, the Department of Finance conducted an audit of the commission's internal accounting controls and its fiscal procedures. The Department of Finance reviewed the invoices that the commission submitted to the Department of General Services for payment from October through December 1986. The audit disclosed weaknesses in three areas: the separation of duties over purchasing and payroll, internal controls over cash disbursements, and the purchases of fixed assets. For example, in July 1986, a commission employee purchased oak office furniture for over \$1,400 without obtaining the appropriate approval to purchase the furniture.

In May 1987, the commission responded to the recommendations of the Department of Finance, indicating that it had taken the appropriate actions to correct the deficiencies noted. To ensure that corrective action had been implemented, we conducted a review of the commission's current internal accounting controls for processing invoices and determined that the commission had corrected deficiencies. For example, the commission employee authorized to receive warrants for travel claims is no longer authorized to approve travel advances, and the commission employee who approves invoices is no longer authorized to approve the report for receiving stock.

We reviewed the 180 invoices that the commission submitted to the Department of General Services from January 1, 1987, through December 31, 1987. Of the 180 invoices that the commission processed, 179 (99 percent) contained the appropriate staff approvals. In addition, all of the invoices that we reviewed appeared to be necessary expenditures for the commission to carry out its operations. For example, in June 1987, a staff member purchased equipment for a total of \$1,548 that was necessary to maintain the inventory of sacred sites. This equipment included a drafting table, stool, lamp, and a camera for photographing actual sites.

Commission Expenditures

From July 1, 1982, through December 31, 1987, the commission's expenditures have remained within the commission's budget. During this period, the commission spends approximately 66 percent of its budget for salaries and approximately 11 percent for travel expenses. Table A-1 shows commission expenditures by category of expenditure from July 1, 1982, through December 31, 1987.

TABLE A-1
EXPENDITURES FOR THE COMMISSION
JULY 1, 1982 THROUGH DECEMBER 31, 1987
(Unaudited)

<u>Category of Expenditure</u>	<u>Amount Spent for Each Fiscal Year</u>					<u>July 1, 1987, Through December 31, 1987</u>
	<u>1982-83</u>	<u>1983-84</u>	<u>1984-85</u>	<u>1985-86</u>	<u>1986-87</u>	
Staff salaries	\$111,279	\$ 90,807	\$135,941	\$138,490	\$190,349	\$ 83,810
Travel	24,765	14,092	23,334	26,885	23,761	9,205
Equipment		398	443	5,728	9,434	522
Other operating expenses	<u>20,753</u>	<u>(542)</u>	<u>57,989</u>	<u>71,921</u>	<u>78,137</u>	<u>17,001</u>
Total Expenditures	<u>\$156,797</u>	<u>\$104,755</u>	<u>\$217,707</u>	<u>\$243,024</u>	<u>\$301,681</u>	<u>\$110,538</u>

**PROCEDURES FOR APPOINTING COMMISSIONERS
AND THE EXECUTIVE SECRETARY
AND FOR HIRING COMMISSION STAFF**

Section 5097.91 of the Public Resources Code established the Native American Heritage Commission (commission). The commission consists of nine members who are appointed by the governor with the advice and consent of the Senate. In addition, Section 5097.92 requires that at least five of the nine members be elders, traditional people, or spiritual leaders of California Native American tribes nominated by Native American organizations, tribes, or groups within the State. Further, Section 5097.92 requires the governor to appoint an executive secretary to administer the commission's activities.

We requested the Governor's Office to inform us of the procedure that it uses to appoint commissioners and the executive secretary to the commission. According to the appointments secretary to the governor, the Governor's Office solicits and accepts applications from eligible candidates on a continual basis. Following its review and evaluation of each candidate, the Governor's Office makes its recommendations for commissioners and the executive secretary. The review covers the candidate's eligibility for the position and his or her capabilities. The appointments secretary further stated that at least five of the nine commission members must be elders, traditional people, or spiritual leaders of California Native American tribes as specified in Section 5097.92 of the Public Resources Code. However, the qualifications for the remaining four commission members are open. Each of the commission members are confirmed by the Senate. The nine commissioners and the executive secretary serve at the pleasure of the governor.

From July 1, 1982, through June 30, 1985, the commission had nine members. Since July 1, 1985, through January 15, 1988, one to three commissioners' positions have been vacant from 10 to 24 months. Moreover, for 6 months during fiscal year 1987-88, the commission had only six members.

Further, during the period of our review, the governor appointed four executive secretaries who administered the commission's activities. The current executive secretary was appointed to the commission on July 22, 1987. In addition to the executive secretary, the commission is budgeted for four other staff positions. The

executive secretary and the commissioners are responsible for hiring commission staff. Two positions are filled by civil service employees, and two positions are filled by noncivil service employees. One of the noncivil service positions is appointed by the executive secretary, and one is appointed by the commission members. As of March 2, 1988, the commission had filled all four staff positions.

Memorandum

To : Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300

Date : MAR 23 1988

File No.:

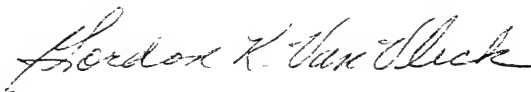
Subject: Auditor General
Draft Report
P-751

From : Office of the Secretary

Attached is a response from the Native American Heritage Commission to your draft report relating to its responsibilities.

The Commission and the new Executive Secretary, Larry Myers, have implemented or are in the process of implementing all of the recommendations contained in the report.

Thank you for the opportunity to review the report in draft form.



Gordon K. Van Vleck
Secretary for Resources


Attachment

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 288
SACRAMENTO, CALIFORNIA 95814
(916) 322-7791

DATE: March 24, 1988

TO: Harold F. Waraas, Assistant Secretary
The Resources Agency
1416 9th St., Room 1311
Sacramento, CA 95814
A-38

FROM: Larry Myers, Executive Secretary 

SUBJECT: NAHC Auditor General Report

Our response to the draft report from the Auditor General's Office on the Native American Heritage Commission is enclosed for review by the Resources Agency. Please call me at 322-7791 if there are any questions to be answered before the response is forwarded to the Auditor General.

Enclosure

LM:JG:jg

NATIVE AMERICAN HERITAGE COMMISSION

915 CAPITOL MALL, ROOM 288
SACRAMENTO, CALIFORNIA 95814
(916) 322-7791

March 24, 1988

Thomas W. Hayes, Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

I have reviewed the draft report prepared by your office on the statutory responsibilities and related activities of the Native American Heritage Commission (NAHC), and concur with your recommendations. Since assuming the position of Executive Secretary to the Commission 8 months ago, I have become aware of the need to solidify our approach to managing statutory responsibilities. The following comments on your recommendations describe steps taken subsequent to the period covered by the report and plans for the immediate future toward this end.

Recommendations 1 and 2- establish goals and priorities, prepare annual reports:

As is noted in the report, I have established goals and objectives for NAHC staff functions. Commissioners have been asked to provide written suggestions for goals and objectives for the Commission itself for discussion at the next quarterly meeting. We agree that annual reports will be helpful. Reports will be done on a fiscal year basis starting with 1988/89, the year for which goals and objectives are presently being established.

In order to identify criteria for measuring efficiency, Commission staff are accumulating statistics on volume and content of workload. Procedures have been established to ensure that figures on reviews of environmental impact reports and Requests for Assistance (with Native American remains and associated grave goods) will be readily available for management analysis and preparation of annual reports, goals and objectives.

Recommendation 3 - consolidate, update and automate the sacred lands inventory:

The Legislative Analyst has recommended approval of our Budget Change Proposal for the purchase of computer equipment for maintaining sacred lands information. Our plans for this equipment include use of a consistent format for all records and on-line access to related information maintained by the Office of Historic Preservation and other governmental agencies. We are presently reviewing software manuals and planning the format for the database. If the budget request is approved, we plan to enter all data on sites currently known to us within a year of installing the equipment. Since sites are continually being identified, the inventory will never be complete, but entering data on newly identified sites will then become a routine process. Reports referencing any field in the records will be readily available. This will be an improvement on the present method of manually searching through files arranged by county, and should improve our ability to review environmental impact reports promptly. It should also provide us with statistical data to support other activities, such as grant proposals.

Recommendation 4 - review grant opportunities and apply for funds for cultural preservation projects:

Public Resources Code Section 5097.94 states that the Commission has certain powers and duties, one of which is "to accept grants or donations, real or in kind, to carry out the purposes of this chapter." Although this language appears to describe an authorization rather than a responsibility, we agree that actively pursuing grant funds is a valuable means of fulfilling the NAHC's mission. I will be meeting with representatives of the California Arts Council in the near future, and we are compiling information on grants from other sources as well as suitable projects. The amount of money available from individual sources and the expense of preparing proposals and administering resultant projects will be important considerations when we decide which grants to apply for.

Recommendations 5 and 6 - conduct follow-ups with county coroners and inform county coroners of their legal responsibilities:

Although tracking the activities of coroners is not a specific statutory responsibility of the Commission, we agree that it falls under the heading of "related activity" and that it is appropriate for the Commission to take an affirmative role in these areas. Our procedures for handling requests for assistance from county coroners now require staff to follow up at regular intervals until we know the resolution of each situation. I recently met with the California State Coroner's Association, which has formed a subcommittee to discuss information sharing problems and solutions between coroners, sheriffs, and the NAHC. We are preparing a brochure that describes legal responsibilities with regard to Native American remains and quotes relevant excerpts from state laws. The brochure will be distributed to coroners' offices throughout the state.

Recommendation 7 - take steps to fill vacant positions promptly:

We agree that this is essential to the smooth operation of the Commission. We now have a full staff and will do our best to ensure that future vacancies in authorized positions are filled promptly.

Thank you for providing us with this opportunity to comment on your findings. We have enjoyed working with your staff and we appreciate the fair and thorough nature of their report. The specific suggestions concerning funding sources and formats for statements of goals will be very helpful. If you or your staff have any questions about these comments, or if we can offer further assistance, please call me at 322-7791.

Sincerely,



Larry Myers
Executive Secretary

LM:JG:jg

cc: G. Van Vleck
T. Eagan
H. Waraas
NAHC Commissioners

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
State Controller
Legislative Analyst
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
Capitol Press Corps